

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of)
)
 Implementation of Section 9) MD Docket No. 94-19
 of the Communications Act)
)
 Assessment and Collection)
 of Regulatory Fees for)
 the 1994 Fiscal Year)

TO: The Commission

RECEIVED

AUG 30 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS IN SUPPORT
OF PETITION FOR RECONSIDERATION

Duhamel Broadcasting Enterprises ("Duhamel"), by and through its undersigned attorneys and pursuant to Section 1.429(f) of the Commission's Rules, hereby submits these Comments in support of the petition for reconsideration of the Commission's Report and Order, Implementation of Section 9 of the Communications Act - Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, FCC 94-140, 59 Fed. Reg. 30984 (June 16, 1994) ("Report and Order"), filed by the National Association of Broadcasters ("NAB"). This submission is timely made within fifteen (15) days of public notice of the filing of the petition for reconsideration.

I. FACTUAL STATEMENT

1. Duhamel is the licensee of the following broadcast stations:

KOTA-TV, Rapid, City, South Dakota
 KOTA(AM), Rapid City, South Dakota
 KHSD-TV, Lead, South Dakota

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KSGW-TV, Sheridan, Wyoming
KDUH-TV, Scottsbluff, Nebraska
KEZV(FM), Spearfish, South Dakota

and their associated low power television and auxiliary stations.

2. Duhamel has sought to meet the broadcast service needs of the Rapid City, South Dakota area for more than four decades through its station, KOTA(AM), Rapid City, South Dakota, and later by the addition of television and FM service.

3. To meet the television viewing needs of the area, Duhamel brought VHF commercial television station KOTA-TV, Rapid City, South Dakota to the air in 1955. The Rapid City, South Dakota viewing area, however, covers a vast area and is divided into two Arbitron Areas of Dominant Influence ("ADI"). The Rapid City, South Dakota ADI extends from the North Dakota-South Dakota border, south to Cheyenne County, Nebraska and west to include Sheridan, Wyoming. The Cheyenne, Wyoming - Scottsbluff, Nebraska - Sterling, Colorado ADI encompasses Cheyenne, Wyoming and claims an island in the middle of the Rapid City, South Dakota ADI surrounding Scottsbluff, Nebraska. See Television and Cable Factbook, Vol. 62 at A-1294 (Warren Publishing, 1994) attached hereto as Exhibit 1. If transported to the East Coast, the area covered by these markets would run, from north to south, between Washington, D.C. and Boston and, from east to west, from the Atlantic Ocean to Buffalo, New York. The area would cover 19 different ADIs with a total of almost 19,500,000 TV households.^{1/} The population of the two ADIs comprising the

^{1/} Those markets would be: New York, NY; Philadelphia, PA; Boston, MA; Washington, D.C.; Hartford-New Haven, CT; Buffalo, NY; Harrisburg-York-Lancaster-Lebanon, PA;
(continued...)

Duhamel stations' viewing area, in contrast, is only a fraction of such an area. Collectively, these two ADI's served by Duhamel account for a mere 134,500 TV households. Id.

4. To fully serve these sparsely populated areas, Duhamel added three VHF stations to act as satellites of KOTA-TV. KDUH-TV, Scottsbluff, Nebraska, serves the Nebraska panhandle, including the island (Scotts Bluff County, Nebraska) within the Rapid City, South Dakota ADI which is actually assigned to the Cheyenne, Wyoming ADI.^{2/} KHSD-TV, Lead, South Dakota, situated approximately 35 miles from Rapid City, transmits from a peak 4,000 feet above the surrounding prairie and provides coverage of western South Dakota, southwestern North Dakota, southeastern Montana and extreme northeastern Wyoming. KSGW-TV is the only television station licensed to Sheridan, Wyoming and provides that area with its only over-the-air major network signal.

5. Without satellite stations such as Duhamel's, most of this several-state area known as the Rapid City viewing area would not receive over-the-air television. For example, of the seven full power television stations licensed to the Rapid City, South Dakota ADI, three are satellite stations. Thus, together, the seven stations provide only four signals, ABC, NBC, CBS and PBS. Id. at A-1044-45, A-1046-49, A-1305, A-1392. In the Lead-Deadwood area and in Sheridan, Wyoming, there are no stations

^{1/}(...continued)

Providence, RI; Wilkes Barre-Scranton, PA; Albany-Schenectady-Troy, NY; Syracuse, NY; Rochester, NY; Johnstown-Altoona, PA; Binghamton, NY; Utica, NY; Watertown-Carthage, NY; Elmira, NY; and Hagerstown, MD. Television and Cable Factbook, Vol. 62 at A-1-4.

^{2/} KDUH-TV also engages in local news insertion.

which are not television satellites. Id. at A-1044-45, A-1305. In the entire Cheyenne, Wyoming - Scottsbluff, Nebraska - Sterling, Colorado ADI, there is only one commercial television station, KGWN-TV, which is not a satellite. Id. at A-206, A-743-44, A-1298-99. Thus, the television satellite stations operated by Duhamel and others are vitally important to the viewers of this vast area.

6. As satellites of KOTA-TV, the remaining Duhamel stations pose very little regulatory burden. In the two areas which have seen the greatest broadcast regulation in recent years, children's television and equal employment opportunity for example, Duhamel's satellite stations present almost no additional regulatory burden. The license renewal applications for KOTA-TV and KHSD-TV were filed on the same day and contained identical children's programming exhibits. The staff, thus, needed to review only one exhibit to grant both applications. Moreover, when the KDUH-TV renewal application was filed less than two months later and when the KSGW-TV renewal application was filed only six months later, their children's programming exhibits reported the same programming identified in the KOTA/KHSD renewals, updated to reflect additions and detail these stations' individualized non-broadcast efforts. The Commission's review of the KOTA-TV exhibit, then, served as the basis for the grant of the remaining three stations' license renewal grants.

7. Moreover, neither KSGW-TV or KHSD-TV has more than five full-time employees. Accordingly, the Commission does not review an FCC Form 395-B each year for these stations, and therefore will not conduct a mid-term EEO review of these stations, nor

does it review an FCC Form 396 in connection with these stations' license renewal applications. Finally, all of the stations, as well as Duhamel's radio stations, are reported on a single ownership report each year again eliminating duplicate Commission effort.

8. Under the 1994 regulatory fee schedule established in this proceeding, however, each of the Duhamel television satellite stations will pay the same fee as KOTA-TV, \$5,000. Thus, to provide the Duhamel television stations' large but thinly populated viewing area -- located in the 168th and 196th ADIs -- with its quality television service, Duhamel must pay an annual regulatory fee of \$20,000. A VHF television station in a more densely-packed top 10 market, however, will only pay \$18,000.

9. A TV Translator station which presents the same regulatory burden as the Duhamel satellite stations, will pay only \$135.00. A locally-originating low power television station also pays only \$135.00 despite the fact that it presents the same regulatory burden as an originating full-power station. See, e.g., 47 C.F.R. §73.926(d) (EBS participation); §73.1201 (station identification); §73.1940 (political broadcasts); §73.2080 (equal employment opportunity); §73.3612 (annual employment report); §73.3613 (filing of network affiliation agreements). LPTV stations were established "to provide opportunities for first local television outlets in smaller cities and towns, as well as to provide service to unserved audience-communities within the larger cities." In the Matter of Review of the Commission's Rules Governing the Low Power Television Service, 9 FCC Rcd 2555,

2555 (1994). In the Duhamel stations' viewing area, this goal is met by the Duhamel and similar satellite stations which should not, therefore, be subject to a higher regulatory fee.

II. ARGUMENT

10. Congress mandated that the Commission collect regulatory fees to recover the costs of its regulatory activities. 47 U.S.C. § 159(a) (1994). In so doing, Congress provided that the Commission should determine the amount of the fees based, in part, on the number of its employees engaged in each of its regulatory activities. 47 U.S.C. § 159(b)(1). Thus, Congress indicated that the fees assessed should be in proportion to the regulatory burden presented by each regulatee.

11. The NAB and others have argued that the Commission should reduce the amount of the fee assessed on full-power television satellite stations because they do not present the same regulatory burden as originating full-power stations. Duhamel supports that argument and submits that its stations are an example of the unfair result which obtains under the current interpretation of the regulatory fee schedule. As is shown above, routine regulation of Duhamel's three satellite stations is almost entirely subsumed in the regulation of KOTA-TV. The public service provided by the stations, on the other hand, is vitally important to the rural area they serve and should be encouraged, rather than penalized by exorbitant regulatory fees.

12. Moreover, in establishing the fee schedule for Fiscal Year 1994, Congress indicated an intent that stations located in

larger markets, whose audience base could support a higher regulatory fee, pay a larger fee. See 47 U.S.C. § 159(g).^{3/} Because of the treatment of their satellite stations, however, stations in markets of large geographic, but small audience, size bear a disproportionately greater fee. Again, the Duhamel stations are an example. These stations located in the 168th and 196th markets pay more than stations in the top ten markets.

13. Congress provided the Commission with the authority to amend the schedule of fees put forth in 47 U.S.C. § 159(g), upon 90 days notice to Congress, "if the Commission determines the schedule requires amendment to comply with" the purposes of the regulatory fee collection scheme. 47 U.S.C. § 159(b)(3)-(4). While the 90-day notice provision has prevented the Commission from adjusting the 1994 regulatory fee schedule prior to the collection of the 1994 fees, Duhamel submits that the Commission has, and should exercise, the authority to amend the schedule with regard to the fee due by television satellite stations. Duhamel also submits that the Commission should apply the amended


^{3/} Duhamel, as a radio station licensee as well, submits that the schedule of fees applicable to radio station licensees should reflect this principle as well. In this area again, Duhamel pays the same fee as radio stations located in much larger markets.

schedule to future collections and to provide refunds for the 1994 fees already collected.

Respectfully submitted,

DUHAMEL BROADCASTING ENTERPRISES

By:



Grover C. Cooper
Lauren Ann Lynch

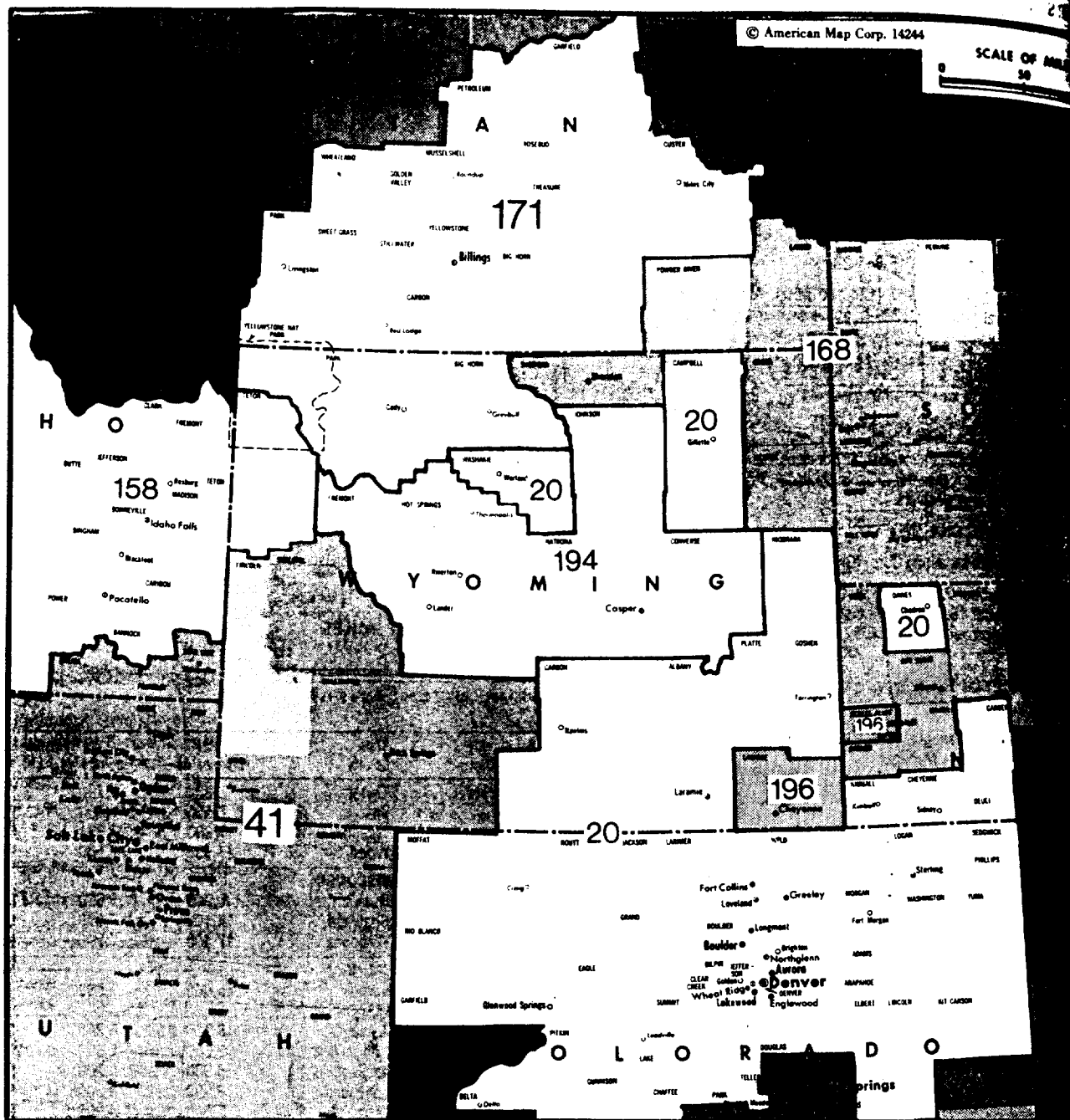
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Dated: August 30, 1994

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EXHIBIT 1



Market	Arbitron ADI TV Households	Rank	Market Area Commercial TV Stations
Denver, CO	1,090,100	20	KCEC (50), KCNC-TV (4), KDVR (31), KFNR (11), KMGH-TV (7), KREG-TV (3), KSBS-TV (2), KTVB (20), KUBD (59), KUSA-TV (9), KWGN-TV (2), KWHI (53), KCCZ (4), KJZZ-TV (14), KOOB-TV (30), KSL-TV (5), KSTU (13), KTVX (4), KUTV (2), KIDK (3), KJFF-TV (8), KJVI (2), KPMI (6), KCLO-TV (15), KEVN-TV (7), KHSD-TV (11), KMY-TV (5), KOTA-TV (3), KSGW-TV (12), KSMI (6), KTVQ (2), KULR-TV (8), KYUS-TV (3), KFNB (20), KFNE (10), KGWC-TV (14), KGWL-TV (5), KGWR-TV (13), KTWO-TV (2), KDUH-TV (4), KGWN-TV (5), KKTU (33), KSTF (10), KTVS (3)
Salt Lake City, UT	614,700	41	
Idaho Falls-Pocatello, ID	108,000	158	
Rapid City, SD	91,100	168	
Billings-Hardin, MT	86,700	171	
Casper-Riverton, WY	43,800	194	
Cheyenne, WY-Scottsbluff, NE-Sterling, CO	43,400	196	

State Cross Reference List

Communities that receive programs of stations that are located elsewhere.

KGWL-TV, Lander See Riverton, WY

Wyoming Station Totals as of November 1, 1993

	VHF	UHF	TOTAL
Commercial Television Stations	8	3	11
Educational Television Stations	1	0	1
	9	3	12

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DECLARATION

I, William F. Duhamel, hereby declare as follows:

1. I am the President of Duhamel Broadcasting Enterprises;

2. I have reviewed the foregoing "Comments in Support of
Petition for Reconsideration;" and

3. The factual assertions made therein, except where official notice may be taken or other source is indicated, are true and correct to the best of my knowledge, information and belief.


William F. Duhamel

Dated: August 29, 1994

CERTIFICATE OF SERVICE

I, ROBIN MCELVEEN, do hereby certify that I have this 30th day of August, 1994, mailed by first-class United States mail, postage prepaid, copies of the foregoing "**COMMENTS IN SUPPORT OF PETITION FOR RECONSIDERATION**" to the following:

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